***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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WRIT PETITION NO : 22091 of 2004

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% 01.12.2004

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Between:

B.Chandramouli S/o.B.Narayana
Resident of Sangareddy, Medak District.

..... PETITIONER

AND

The General Manager, Medak District Cooperative Central Bank Ltd.,
Sangareddy, Medak District.

.....RESPONDENT

! COUNSEL FOR THE PETITIOENR: Sri R.V. Subba Rao

^ COUNSEL FOR THE RESPONDENT: Smt.Bobba Vijayalakshmi, S.C. for the respondent

< Gist:

> Head Note:

? CITATIONS:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH

AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF DECEMBER

TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 22091 of 2004

Between:

B.Chandramouli S/o.B.Narayana
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Sangareddy, Medak District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the action of the respondent in issuing show cause notice dated 19.11.2004 in his proceedings Rc.No.50/Estt/S/AEO/2004-05 as illegal, arbitrary, improper and without jurisdiction and quash the same by issuance of a writ, direction, or order, particularly one in the nature of Certiorari and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interests of justice and circumstances of the case.

Counsel for the Petitioner:MR.R.V.SUBBA RAO

Counsel for the Respondent No.: Smt.Bobba Vijayalakshmi, S.C. for the respondent

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The Court made the following :

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.NO.22091 OF 2004

ORDER:

The petitioner is employed as Assistant General Manager in the District Cooperative Central Bank, Medak. Disciplinary proceedings were initiated against him, and he was placed under suspension. A charge-sheet was issued, and an enquiry officer was appointed. The enquiry officer submitted his report
on 01-10-2004, holding that the charges framed against the petitioner are not proved. The respondent, however, issued a show cause notice through proceedings dated 19-11-2004, by observing that, he differs with the findings recorded by the enquiry officer, and treats the same as having been proved. The petitioner was required to show cause as to why he should not be dismissed from service. The same is challenged in this writ petition.

Sri R.V.Nagabhushan Rao, learned counsel for the petitioner submits that the impugned order is violative of principles of natural justice and settled principles of law. He also submits that not being the appointing authority, the respondent has no jurisdiction to issue the impugned show cause notice. He contends that even where the disciplinary authority proposes to differ with the findings recorded by the enquiry officer, he has to issue notice to the concerned, and it is only after taking the explanation into account, that further steps can be taken. Learned counsel submits that, in the present case, the respondent arrived at a conclusion that the charges

against the petitioner are proved, without hearing the petitioner, for this purpose.

Smt.Bobba Vijayalakshmi, learned Standing Counsel for the respondent, on the other hand, submits that the writ petition is not maintainable against the show cause notice. She submits that it is always open to the respondent to differ with the findings recorded by the enquiry officer, and that he has already indicated the reasons for differing with the findings. She submits that the opinion expressed by the respondent in the show cause notice is tentative and that the final decision will be taken only after considering the explanation, that may be submitted by the petitioner.

The petitioner is working as Assistant General Manager of the District Cooperative Central Bank, Medak. Disciplinary proceedings have been initiated against him. The enquiry officer submitted his report on 01-10-2004. He stated that the charges levelled against the petitioner are not proved. The respondent differed with the same and issued the impugned show cause notice. Two contentions are raised in challenge to the same, viz., that the respondent does not have the jurisdiction to issue the notice, and that the show cause notice is violative of principles of natural justice. On behalf of the respondent, an objection is raised as to the maintainability of the writ petition.

It is true that almost as a matter of principle, the High Court does not entertain writ petitions against the show cause notice. There are, however, exceptions to the same. If the show cause notice is issued by an authority, not vested with the power, or where it violates the principles of natural justice, it can certainly be examined and interfered with, without requiring the effected parties to undergo the ordeal of submission of explanation and awaiting any orders adverse to them. In the present case, the findings recorded by the respondent, in the show cause notice itself, even while differing with the enquiry report, indicates a clear infraction of principles of natural justice. This aspect would be elaborated in the subsequent paragraphs. Suffice it to say that the writ petition cannot be said to be not maintainable.

The objection raised by the petitioner as to the jurisdiction of the respondent, to issue the show cause notice, does not need any elaboration at this stage. The record discloses that the earlier show cause notice was issued by the respondent, pursuant to a decision taken by the managing committee and subsequent proceedings were monitored by him. The petitioner had already acted on the same. The matter is yet to reach finality. Further, the impugned show cause notice was

issued pursuant to the orders issued by the Collector/Chairperson, and not by the respondent, on his own accord. Therefore, this Court does not find it appropriate to express any opinion in that regard, at this stage. The question is reserved to be considered at a proper stage, as and when the petitioner suffers any detriment in the hands of the respondent, in the form of final orders. Now remains the question as to the legality of the impugned notice. As observed earlier, the

enquiry officer submitted his report and held that the charges against the petitioner are not proved. The findings recorded during the course of enquiry constitute an important material for the disciplinary authority in arriving at a conclusion. The findings in the enquiry are not binding upon the disciplinary authority. It is always open for the disciplinary authority to differ with the findings recorded by the enquiry officer. However, once findings are recorded in favour of a delinquent employee, a semblance of right accrues to him. If the disciplinary authority proposes to differ with such findings, he is required to issue a show cause notice to the employee, to explain as to why a view, different from the one taken by the enquiry officer, be not taken. The re-appreciation by the disciplinary authority, shall be, of the same material which constituted the record before the enquiry officer. It is impermissible to rely upon any further or other material or evidence.

It is only when an employee submits his explanation to the proposal of the disciplinary authority, to differ with the findings recorded by the enquiry officer and the same is considered, that a further order, as to the findings on charges, can be passed. In a given case, though the disciplinary authority has proposed to differ with the findings, he might drop the proposals on consideration of the explanation submitted by the employee. In cases where the disciplinary authority proposes to differ with the findings recorded by the Enquiry Officer, the show cause for inflicting penalty can be issued only after the disciplinary authority arrives at conclusion, whether or not to differ with the findings of the enquiry officer. These two exercises are separate and independent.

In the present case, the respondent has not only chosen to differ with the findings of the enquiry officer, but had proceeded further to hold that the charges against the petitioner are proved, and he did not mince words in this regard. The impugned show cause notice itself makes this aspect very clear. A perusal of the following paragraph contained in the show cause notice would be beneficial.

> "After considering the charges, explanation submitted by the charged employee, finding of the Enquiry Officer, gravity of the charges, material on record, gross negligence of the charged employee which caused financial loss to the Bank, the Disciplinary Authority's own findings on the basis of the documentary evidence on record, the Disciplinary Authority has disagreed with findings of the Enquiry Officer and opined that the charges are proved and the charged employee is responsible for disbursement of loan based on fabricated records jointly and severally along with others besides having total and direct responsibility for misplacement/loss of the loan file being custodian as Branch Manager of the Branch. The Disciplinary Authority has therefore ordered to impose the punishment of dismissal from service as per the I.T. Award Chapter XIII V (a)."

It is evident that the disciplinary authority had not only disagreed with the findings of the enquiry officer, but had found that the charges are proved. The decision to inflict the punishment was also taken. The purpose of issuing notice to the petitioner is not to require him to show cause as to why the disciplinary authority shall not treat the charges against the petitioner as proved. The purpose is to seek explanation as to why, he should not be dismissed from service, besides effecting recovery of Rs.4,61,000/-. The impugned show cause notice is clearly violative of principles of natural justice, inasmuch as the findings, that were recorded by the enquiry officer, in favour of the petitioner, were reversed by the disciplinary authority, without hearing him.

Hence, the writ petition is allowed, and the impugned show cause notice is set aside. It is, however, left open to the respondent to take action against the petitioner in accordance with law. There shall be no order as to costs.

L. NARASIMHA REDDY, J.

Dt.01-12-2004

Note: L.R. copy to be marked.

(B/O)

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To

One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy (for his Lordships kind perusal)

1. The General Manager, Medak District Cooperative Central Bank Ltd., Sangareddy, Medak District.

2. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.

3. The Secretary, A.P. Advocate's Association, Library, High Court Buildings, Hyderabad.

4. 2 C.D. copies.

THE HON'BLE SRI JUSTICE L. NARASIMHA REDDY

W.P.NO.20054 OF 2004

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ORDER:

Learned counsel for the petitioner seeks permission of the Court to withdraw the writ petition, reserving liberty to seek appropriate relief in the A.P. Administrative Tribunal. Permission is accorded, and the writ petition is dismissed as withdrawn, without prejudice to the right of the petitioner to approach the Tribunal. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt.01-12-2004

KO

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 22091 of 2004

Dated 01-12-2004